

Walsh Wants To Question President

Iran-Contra Prosecutor To Study Bush's Notes, Seek January Session

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Independent counsel Lawrence E. Walsh will seek to question President Bush next month, according to informed sources, after reviewing the Bush notes about the Iran-contra affair that were first made known to prosecutors 16 days ago.

Walsh's prosecutors already had opened an inquiry into the hitherto secret notes when Bush announced his pardons Thursday of former defense secretary Caspar W. Weinberger and five other men involved in the Iran-contra scandal. In giving the pardons, the president declared that prosecution of the six represented the "criminalization of policy differences" and that all had acted out of "patriotism."

White House lawyers have assured Walsh's office that they are trying to find all the notes relevant to Iran-contra, but Walsh has said there are significant gaps in what has been produced so far. Eventually, the sources said, Walsh is likely to issue a subpoena for the papers, described by White House officials as typewritten transcripts of end-of-the-day reflections that Bush started keeping in November 1986, the month the scandal became public.

Walsh said yesterday that he was working at home in Oklahoma City on his final report. He said he would not decide what to do about Bush's "misconduct"—as Walsh has characterized it—until returning to Washington on Jan. 10 but that nothing would be lost by waiting. Questioning of Bush is not likely to occur until after he leaves office Jan. 20.

White House officials said on the day of the pardon that they intended to release, as one package, Bush's notes and the deposition Bush gave in January 1988 to

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Walsh's investigators, if and when Walsh sends it to them. They also said Weinberger would make public all of his notes. A White House spokesman yesterday dismissed as hypothetical the question of how Bush would react to an attempt by Walsh to question him.

Walsh's indignation over the belated disclosure of the notes, which he saw as part of a consistent pattern by senior officials of the Reagan administration, was heightened by the Christmas-Eve pardon of Weinberger.

One of the charges against Weinberger was that he had concealed his own detailed Iran-contra notes from Walsh's prosecutors and congressional investigators. Walsh also had discovered over the last two years of his six-year investigation that former secretary of state George P. Shultz or aides working for him had withheld relevant notes. In addition, notes made by former White House chief of staff Donald T. Regan were not turned over to prosecutors until years after investigators first asked the Reagan White House for them.

Walsh said he felt each official "was playing his own game" in holding back his notes, but the cumulative effect of their actions was to protect then-President Ronald Reagan from the threat of impeachment proceedings.

With all these notes and other information his investigators had accumulated, Walsh said, the evidence would have shown that a November 1985 shipment by Israel of U.S.-made arms to Iran was "a deliberate violation of the Arms Export Control Act" approved by Reagan himself.

The notes, he added, show that in November 1986, Reagan and his top aides tried to conceal the violation, in part by saying they did not know it had taken place until months later. Walsh said Bush's recently disclosed notes have yet to be fully examined and it remains to be seen whether they fall into the same pattern.

Walsh declined to comment on the content of the Bush notes turned over so far, but another source said they reflected enough attention to Iran-contra detail to record when Shultz turned over some of his notes to investigators in 1987.

Walsh said in a telephone interview yesterday that given the past pattern of deception, he thinks the pardon of Weinberger "is more devastating than the Reagan coverup." Bush, Walsh said, has "stopped the trial of a confederate. Whether criminal or not, it shows the ethics of the administration in a way that I could not have demonstrated."

Bush, when he issued the pardons, said that they would not prevent "full disclosure" because Iran-contra has been "investigated exhaustively" by the Tower Board, a joint congressional committee and by Walsh. "In granting these pardons today," he said, "I am doing what I believe honor, decency, and fairness require."

Walsh's chief prosecutor for the Weinberger case, James J. Brosnahan, said yesterday that he had been planning to call Regan, possibly Shultz, and other top Reagan administration officials as prosecution witnesses for the trial, which was set to begin Jan. 5.

Brosnahan added that he was in U.S. District Court on Wednesday at a pretrial conference in the judge's chambers when Weinberger lawyer Robert S. Bennett, perhaps in response to a question from the judge, said that he might have to call Reagan and Bush as defense witnesses and was still considering this.

"As I look back on this pardon," Brosnahan said, "it seems to me there is a big question as to whether the defense made it clear that if this trial went forward, they would call [Bush] as a witness. If it made that clear, he would be issuing a pardon so he could avoid doing something he really has never done. He has given depositions before, but he has never been asked in public [under oath] what he knew and saw" about the Iran-contra affair.

When it comes to Bush's notes, the key question for Walsh to determine is why they were withheld until Dec. 11. Walsh's office and congressional investigators say that their requests for documents to the White House as far back as the spring of 1987 clearly specified relevant notes and diaries. Bush's own handwritten diary notes—as opposed to the newly revealed typewritten notes—were made available to Iran-contra investigators after being screened for relevancy by White House lawyers.

Bush said publicly on several occasions that he had produced all relevant materials from his office. On Sept. 15, he said in an NBC-TV interview, "I've given every bit of evidence I have to these thousands of investigators."

But on Dec. 11, as Iran-contra prosecutor John Q. Barrett was leaving his office to accompany Brosnahan to the courthouse, Barrett got a call from a lawyer for the White House who informed him about Bush's notes.

"John said I just got an incredible call—you won't believe it," Brosnahan said. "He [the White House lawyer] said they were embarrassed, that there were these notes from Bush, who was then vice president. And we were welcome to go over and look at them. He said they should have been produced, that they dealt with Iran-contra among other things."

Walsh said his office was suddenly obliged to review the notes for the upcoming Weinberger trial and to tell Weinberger's lawyers of any information in them that might help the defense.

"If there was something in there that was important to the defense," Walsh said, "that increases the likelihood that Bush would be called as a witness by the defense. Then he would be cross-examined by us."

Walsh said he did not know why the White House suddenly chose to disclose the notes instead of remaining silent but speculated it might have been prompted by the fact that Bush is leaving office. "You have a disintegrating staff," Walsh said. "Some people may be more willing than others to cover. This is a group that was politically put together."

Walsh had planned to use the Weinberger trial to show the high-level coverup that he believed began in the fall of 1986 when a plane secretly controlled by the White House was shot down over Nicaragua while resupplying contra rebels fighting the Marxist government there.

The coverup, according to investigators, took on added urgency a month later when it became known that the White House was selling arms to Iran in an effort to free U.S. hostages then being held in Lebanon by pro-Iranian terrorists.

It became a public scandal Nov. 25, 1986 when then-Attorney General Edwin Meese III announced that some of the profits from the arms sales to Iran had been diverted to the contra cause.

At the time of his announcement, Meese said the president had not known about the November 1985 shipment until after it took place. A Meese aide earlier that month had described that shipment as potentially illegal in a memo, and White House aides feared that it could become grist for potential impeachment proceedings.

Weinberger was one of the top Reagan officials who denied any knowledge of the 1985 shipment. The arms shipment ran afoul of the Arms Export Control Act and, because the CIA assisted in it, it also ran contrary to a law requiring a presidential "finding" authorizing covert CIA activities.

The former defense secretary was originally indicted last June on five counts, one accusing him of obstruction of Congress and four of lying to congressional investigators and Walsh's prosecutors.

The obstruction count, which focused on Weinberger's alleged concealment of his notes, was dismissed on legal grounds last September. It was replaced on Oct. 30, four days before the presidential election, by a false statement count that included the text of several Weinberger notes.

One of the notes, jotted down by Weinberger after a Jan. 7, 1986, meeting in the Oval Office, showed that the arms sales to Iran were explicitly portrayed as a swap to

free U.S. hostages and that Bush approved of the transactions while Weinberger and Shultz did not.

The note contradicted Bush's statements that he did not consider the transactions an "arms-for-hostages" deal and that he was unaware of the Weinberger-Shultz opposition. The disclosure toward the end of the presidential campaign fueled accusations by some Republicans, including Weinberger, that the case was politically inspired.

The controversial count was dismissed after the election, by U.S. District Judge Thomas F. Hogan, but Weinberger's trial on the remaining four counts appeared on track when the White House announced the pardons.

In addition to Weinberger, those pardoned were former CIA spy chief Clair E. George, former White House national security adviser Robert C. McFarlane, former assistant secretary of state Elliott Abrams, former CIA Central American Task Force chief Alan D. Fiers Jr. and former CIA European Division chief Duane R. "Dewey" Clarridge.

Like Weinberger, Clarridge was still awaiting trial on charges of lying to Congress. George was convicted Dec. 9 on two felony counts of lying. McFarlane, Fiers and Abrams had all pleaded guilty to misdemeanor charges of withholding information from Congress.

The president did not pardon three other men who either pleaded guilty or were convicted in the scandal: retired Air Force major general Richard V. Secord, a key middleman; Thomas G. Clines, a former CIA official involved in arms purchases for the contras, and Albert Hakim, Secord's business partner.

In his statement, Bush said he was pardoning government officials in part because "they did not profit or seek to profit from their conduct."

An effort for executive clemency is expected to be made on Secord's behalf on the grounds that he was recruited specifically to make a profit and thereby generate money for the contras.